FARM CREDIT ADMINISTRATION
Washington, D. C.

SUMMARY OF CASES

RELATING TO

FARMERS' COOPERATIVE ASSOCIATIONS

.....

Prepared under the direction of
L. S. Hulbert
Assistant General Counsel
Farm Credit Administration

.....

COOPERATIVE RESEARCH AND SERVICE DIVISION

Summary No. 8 December 1940

Table of Contents

ASSOCIATION DENIED INCOME TAX EXEMPTION AS CONTRIBUTIONS OF NONMEMBERS TO CAPITAL INURED TO BENEFIT OF MEMBERS

The articles of incorporation of a cooperative dairy association which did business with members and nonmembers included the following provision:

> "The object of this association shall be to buy, sell, manufacture and deal in milk, cream, ice cream, butter, cheese, eggs, poultry, salt, feed and such other products as may be produced or supplies needed by its members; to enter into such contracts with its members as are authorized by law and necessary to the proper conduct of its business, and particularly such contracts as are authorized by the statutes under which this association is incorporated.
>
> "The association shall also have the right to buy, hold, sell and convey personal property and such real estate as may be necessary or convenient for the proper conduct of the affairs of the association.
>
> "The operations of this association shall be for the mutual benefit of its members as producers of farm products, and the association may in its by-laws prescribe the extent to which it may deal in the products of non-members, provided that the products of non-members dealt in shall not be greater in value than such as are handled by it for members."

Upon an examination of the books and records of the association by a revenue agent, the association filed tax returns for the years 1936 to 1938, inclusive, and these returns accompanied the report of the examiner to the revenue agent in charge. Thereafter, the association filed a suit to recover the taxes paid, interest and penalties on the ground that it was an exempt corporation under the provisions of section 101 of the Internal Revenue Act.

The Federal Court found that:

* * * * * * * * * * *

> "The ratio of the value of products marketed for non-members to total value of products marketed during the year 1936 is approximately 29 per cent; that the ratio of the value of products marketed for non-members to total value of products marketed during the year 1937 is approximately 25 per cent. Taxpayer's accounts show that undivided profits have steadily increased (except for a miner [minor] decrease in the year 1938) over the period from January 1, 1936, to December 31,1938.

The amounts of undivided profits for that period, as shown in the taxpayer's balance sheets, Schedule 'L' of its income tax returns, are as follows:

	Amount of Undivided Profits	Increase or Decrease
Jan. 1, 1936	$ 9,284.15	
Dec. 31, 1936	9,930.90	$ 646.75
Dec. 31, 1937	10,679.77	748.87
Dec. 31, 1938	10,156.54	523.23 (Decrease)

"On January 1, 1936, Plant and Equipment account was charged with $11,943.17. On December 31, 1938, that account stood charged with $14,423.19, a net increase of $2,480.02."

In denying the right of the association to recover, the court said:

"That in order to be entitled to exemption from taxation as claimed under §101 of the Internal Revenue Code, 26 U.S.C.A. Int. Rev. Code, §101, plaintiff must be 'organized and operated on a cooperative basis [a] for the purpose of marketing the products of members or other producers,' etc. It must appear that under plaintiff's organization it may not deduct and retain a profit for itself. It must further appear that plaintiff accords to all producer patrons, members and non-members, an equality of treatment. Burr Creamery Corporation v. Commissioner, 9 Cir., 62 F. 2d 407, 409, certiorari denied, 289 U.S. 730, 53 S. Ct. 527, 77 L. Ed. 1479; Northwestern Jobbers' Credit Bureau v. Commissioner, 8 Cir., 37 F. 2d 880; Farmers Union Co-op. Co. v. Commissioner, 8 Cir., 90 P. [F.] 2d 488.

"Plaintiff's contributions from profits to plant and equipment, or other capital items, inure ultimately to the benefit of members to the exclusion of nonmembers.

"Upon expiration and winding up of the corporation, all net capital items would be allocated to members to the exclusion of non-members." (Underscoring added.)

Fertile Co-op. Dairy Ass'n v. Huston, Collector of Internal Revenue, 33 F. Supp. 712.

COOPERATIVE BRINGS TREBLE DAMAGE ACTION UNDER THE SHERMAN ANTI-TRUST ACT

A strawberry growers' cooperative association, composed of some 8,000 growers, which functioned as a marketing agent for its members in the marketing and distribution of strawberries and which had taken assignments from its members of their alleged causes of action, brought an action for treble damages under the Sherman Anti-Trust Act, the Clayton Act, and the Robinson-Patman Act against the Great Atlantic & Pacific Tea Company and the Atlantic Commission Company, Inc., the Kroger Grocer & Baking Company, Inc., and Safeway Stores, Inc., on the ground that the defendants "resorted to a merchandising technique of using strawberries as 'loss leaders' to destroy competition and create monopoly."

The Federal court decision, cited hereafter, is confined to considerations of procedural questions which arose in the action.

Louisiana Farmers' Protective Union, Inc. v. Great Atlantic & Pacific Tea Company of America, Inc., et al. 31 F. Supp. 483.

RIGHT OF AN ASSOCIATION TO PATRONAGE DIVIDENDS DENIED

A cooperative association was accepted as a member of a cooperative auction company in December, and became entitled to a certificate for one share of stock upon paying $100 therefor, the price fixed by the charter. Subsequently, the association was represented at meetings and patronized the auction during the marketing season which followed. At a stockholders' meeting of the auction company, held in February, at which the president of the association was present,

> "A lengthy discussion regarding the purchasing of stock in the Strawberry & Vegetable Auction, Inc., was heard and it was unanimously agreed that any new associations becoming members of the Auction, desiring to buy stock, should purchase and pay for same before each berry season and not after the deal is over."

The statute under which the auction company was incorporated provided that a certificate of stock might not be issued until the shares represented thereby have been fully paid for. After the close of the marketing season, the association tendered its check for $100.00 in payment of a share of stock. The auction company returned the check and denied the right of the association to a patronage dividend. The association "brought suit to be decreed a stockholder and member of the defendant company and for judgment against it for $1,718.11 with interest, less $100 due for its share of stock" and obtained a judgment in the lower court. In reversing the judgment, the court of appeals of Louisiana stated:

"As plaintiff, through its president, was present at the meeting held February 18, 1932, and participated therein, that fact charged it with notice of the agreement entered into at that time, but in addition thereto defendant wrote plaintiff a letter on March 3, 1932, formally notifying plaintiff that its one share of stock had been already issued and would be mailed upon receipt of its check for $100. This letter concludes with the statement: 'So please arrange to mail your check upon receipt of this letter so we can send you this stock certificate.' The plaintiff, although accepted as a member, could not under the law actually become a stockholder until it had paid for the one share of stock allotted to it, and in order to be a member one had to first be a stockholder. But instead of sending its check as requested by defendant on March 3, 1932, it did nothing until after the shipping season for the year was over.

"On May 23, 1932, plaintiff wrote defendant as follows: 'In checking over our files we find where we have not paid you for our one share of stock. Attached please find our check No. 2397 for $100.00, for which please mail us our certificate for our share of Strawberry & Vegetable Auction, Inc. stock.' It is shown that at this time the shipping season was over, although some of the cars shipped had not [been] heard from.

"The minutes of a meeting of defendant's board of directors held on July 12, 1932, shows that defendant earned profits during the 1932 season in amount $33,717.14, and if the plaintiff was entitled to participate therein, it was entitled to receive further stock in the defendant corporation to the amount claimed in its petition. But its right thereto is resisted by the defendant on the ground that it was not a stockholder during the season in which the profit was earned.

"Under the express language of the law and the undisputed facts, we feel constrained to agree with the defendant. Payment for stock must be made before each berry season, and not after the deal is over. The result of not timely paying is that plaintiff was not a stockholder nor member at the time the above-mentioned profit was earned, and consequently has no right to participate therein. The fact that plaintiff was permitted to participate in meetings and shipped his berries through defendant did not and could not make him a stockholder and resulting member, in violation of the law to the contrary. The plaintiff could not take the chance of not paying for the share of stock the amount it had obligated itself to pay and thereby escape the consequence of being a stockholder and member, in case loss had resulted from the 1932 shipping season,

and then after the risk was over and a profit had been made, while it was not a member, pay for its stock and justify its right to participate in the profit."

Farmers Truck Ass'n v. Strawberry & Vegetable Auction, Inc. (La.) 163 S. 181.

ARE COOPERATIVE ASSOCIATIONS REQUIRED TO PAY CONTRIBUTIONS ON WAGES OF EMPLOYEES UNDER STATE UNEMPLOYMENT COMPENSATION ACTS?

The Supreme Court of Colorado recently affirmed a decision of the lower court, holding that a cooperative association was not required under the Unemployment Compensation Act of Colorado to pay contributions on wages of employees.

Pursuant to the statute, the Industrial Commission promulgated Regulation No. 6, which contains the following provision:

"The term 'Agricultural Labor' includes all services performed * * * (B) By an employee in connection with the processing of articles from materials which were produced on a farm; also the packing, packaging, transportation, or marketing of those materials or articles. Such services do not constitute 'agricultural labor,' however, unless they are performed by an employee of the owner or tenant of the farm on which the materials in their raw or natural state were produced, and unless such processing, packing, packaging, transportation or marketing is carried on as an incident to ordinary farming operations as distinguished from manufacturing or commercial operations, or unless the products grown were produced under ordinary field operations as distinguished from products specially cultivated under artificial structures or diggings. As used herein the term 'farm' embraces the farm in the ordinarily accepted sense, and includes * * * fruit * * * farms, * * * and orchards."

Concerning this regulation, the court stated:

"The commission complains that in determining that the questioned labor was agricultural, the trial court considered the three clauses of the second sentence of paragraph B of the regulation as though they were stated in the disjunctive and thus eliminated the provision that the labor must be performed 'by an employee of the owner * * * of the farm * * *,' which it argues is a conjunctive prerequisite of the definition. We do not understand this was quite the formula the trial court adopted, and surmise that in its concern over questions relating to the construction of the regulation the commission

has overlooked the fundamentals controlling the controversy. It is certain that the products involved herein are purely agricultural in character and were produced under ordinary field operations on fruit farms and orchards. Thus the decisions in Great Western Mushroom Co. v. Industrial Commission, 103 Colo. 39, 82 P. 2d 751, and Park Floral Co. v. Industrial Commission, 104 Colo. 350, 91 P. 2d 492, 494, wherein the products involved were 'specially cultivated under artificial structures or diggings' and not 'produced under ordinary field operations,' are in no manner applicable in the case at bar. It also is self-evident, as the regulation expressly recognizes, that the marketing of the crop is an essential of, and an incident to, orthodox farm operations. Also it is conceded that if an individual farmer member of the association marketed the fruit produced from his orchard, the labor attendant to such marketing operation would enjoy an exempt status under both regulation 6 and statute. The commission contends, however, that a transition from an exempt to a non-exempt position occurs when the association takes over the marketing function, and the labor incident thereto is performed by its employees, and not the farmers. We cannot agree with this contention. If the labor employed by one individual grower in marketing his crop is within the exception of the statute, as unquestionably is the case, it would seem that if two or more farmers pool their crops and cooperate in marketing them, their situation would not be different from that of the individual grower. It is a matter of common knowledge that all fruit growers do not belong to cooperative associations and that such producers individually, with labor employed by them, attend to their own marketing operations. Thus we can perceive no reason for holding that because a number of fruit farmers cause a cooperative association to be organized for the purpose of facilitating the marketing of their farm products, they should be subject to the terms of a regulatory statute which concededly would not apply to the labor employed by them if acting individually, or by other persons engaged in the same activity who are not members of such an association. See Yakima Fruit Growers' Ass'n v. Henneford, 182 Wash. 437, 47 P. 2d 831, 100 A.L.R. 435, wherein it was held that a nonprofit cooperative association is within the exceptions of the Washington Sales Tax Act exempting from the tax persons engaged in the business of growing any agricultural or horticultural product or crop, and that such a corporation is to be regarded in the same category as the individual producer. The basic conception of an agricultural cooperative association is that of a group of farmers who reside in the same vicinity acting together for their mutual benefit in the cultivating, harvesting and marketing of their agricultural products, and the association

itself, with the special powers and limitations conferred by statute, is merely a convenient instrumentality in the hands of the farmers for carrying on such activities. As is stated in United States v. Rock Royal Co-op., 307 U.S. 533, 59 S. Ct. 993, 1008, 83 L. Ed. 1446: 'These agricultural cooperatives are the means by which farmers and stockmen enter into the processing and distribution of their crops and livestock.' In Mountain States Ass'n v. Monroe, 84 Colo. 300, 269 P. 886, we held that the relation between a cooperative marketing association and its members is that existing between a trustee and his beneficiary or a principal and his agent. Under our cooperative marketing law, such associations are given the power 'to act as the agent or representative of any member or members in any of the above mentioned activities' (c. 106 §19 (c) '35 C.S.A.), which includes 'marketing' (c. 106, §17, '35 C.S.A.). Section 35 of the Cooperative Marketing Act provides: 'Any provisions of law which are in conflict with this article shall be construed as not applying to the associations herein provided for. Any exemptions whatsoever under any and all existing laws applying to agricultural products in the possession or under the control of the individual producer, shall apply similarly and completely to such products delivered by its members, in the possession or under the control of the association.' Accordingly, because of the peculiar relationship between the cooperative association and its members, it would seem evident that such of the purely agricultural activities of the producer members as are incidental to his ordinary farming operations remain so whether they are performed by him on his farm or for him through the medium of his cooperative marketing association. By the circumstance that the expense of marketing is apportioned on a pro-rata basis among the members of the cooperative, the farmer member just as directly pays the wages for all labor involved in the marketing service as if he had paid his individual employees for doing the same work. In either case the labor incident thereto is 'agricultural labor' and that is what the statute exempts. In the sense that the employees of the association to this extent are the farmers' instrumentalities for the performance of this service, there is nothing in the regulation inconsistent with this conclusion. A different result might attain where farm crops are marketed by a commercial 'profit corporation' (See H. Duys & Co. v. Tone, 125 Conn. 300, 5 A. 2d 23), or are not marketed in an unmanufactured state." (Underscoring added.)

In the course of its decision, the court also made the following comment regarding the Federal Social Security Act:

"When performed by a farmers' cooperative association the services here involved now are expressly exempted from the operation of the Federal Social Security Act 42 U.S.C.A. § 301 et seq., 26 U.S.C.A. Int. Rev. Code §1607 (1) (4)."

Attention is called to the statutory provisions underscored above, which it is believed the court regarded as largely determinative of the case. The same conclusion would not necessarily be reached in other jurisdictions having different statutes.

Industrial Commission v. United Fruit Growers Ass'n (Colo.) 103 P. 2d 15.

FEDERAL TRADE COMMISSION ISSUES ORDER AGAINST CHEESE MANUFACTURERS

On October 5, 1940, the Federal Trade Commission issued a press release, reading as follows:

"Five corporations purchasing for resale approximately 75 per cent of the Swiss and Limburger cheese produced in Wisconsin, have been ordered by the Federal Trade Commission to cease and desist from an agreement or combination to fix and maintain the prices paid the producers for such cheese.

"Respondents are Kraft Cheese Company, Chicago, and its subsidiary and agent, Badger-Brodhead Cheese Company, Monroe, Wis.; The Borden Company, New York, and J. S. Hoffman Company, Chicago, and its subsidiary and agent, Triangle Cheese Company, Monroe, Wis., which, according to findings, purchase the output of approximately 200 of the 250 cheese factories in the Monroe, Wis. area, most of which plants are cooperatively owned by farmer-producers; have no substantial storing facilities; have no marketing facilities other than through dealers, and little or no financial reserves.

"In August, 1938, the findings continue, as a result of an appeal by Wisconsin farmer-producers for relief from low prices for Swiss and Limburger cheese, the Wisconsin State Department of Agriculture called conferences which were attended by its representatives and those of the producers and dealers. The producers' representatives suggested that monthly meetings be held under the department's sponsorship between representatives of the cheese factories and the dealers, at which attempts would be made to agree on fair prices for the dealers to pay for cheese produced by the factories. The request was acquiesced in by the dealer representatives, according to findings, and the Badger-Brodhead Cheese Company, Triangle Cheese Company, and The Borden Company joined other dealers in sending representatives to the meetings at which market information was exchanged and discussed and prices agreed upon.

"Pursuant to their agreement, understanding and combination, the findings continue, the respondents, along with representatives of other dealers and of the Monroe producers, fixed the prices to be paid the cheese factories for the two types of cheese, the representatives of the Badger-Brodhead, Borden and Triangle companies, with the other dealers' representatives, acting as a unit in offering to representatives of the cheese factories the prices which the dealers would pay for cheese. Prior to their meetings with the producer representatives, the findings continue, the representatives of the respondents and other dealers held separate meetings among themselves at which they agreed upon the initial prices they would offer the producers' representatives, and during the meetings with the producers' representatives, also held separate meetings among themselves at which they set the upper limits as to the prices they would agree to pay the factories.

"In very few instances, the findings continue, did the dealers' representatives, including those of the Badger-Brodhead, Borden and Triangle companies, accede to the request of the producers' representatives for increased prices, the producers' representatives, in most instances, being required to accept the lower prices offered by the dealers' representatives or receive the same prices paid the preceding month.

"The Commission's order directs that the respondents, in connection with the purchase of Swiss or Limburger cheese sold or offered for sale by the producers or manufacturers thereof, cease and desist from fixing or maintaining, or attempting to fix and maintain, pursuant to agreement, understanding or combination, the prices offered to be paid, or paid, for such cheese.

"The Commission closed, without prejudice to its right to reopen and resume proceedings, should future facts so warrant, the case growing out of its complaint in this proceeding as to National Dairy Products Corporation, New York (of which Kraft Cheese Company is a solely owned subsidiary), which was found not to have engaged in the acts or practices of the other respondents as found." (Underscoring added.)

(4071)

RIGHTS OF WITHDRAWING MEMBERS IN REVOLVING FUND

The assignee of a member of the California Almond Growers Exchange brought an action against it for an accounting, and for the recovery of deductions from the sales proceeds of crops of almonds of certain years which had been placed in the revolving funds of the

association. From an adverse judgment in the trial court, the plaintiff appealed.

The association operated on a pool basis, and in accounting to its members, showed the net price per pound to be paid by the association to the grower for all almonds in each pool, but the statements were not itemized so as to show the gross amount realized for the almonds and the amount of expenses and deductions.

The bylaws provided that it was the duty of the directors to render to each member, as soon as practicable after the close of the season, a statement of the commodities received, of the pools established, of all sums received from the sale or disposition of the commodities, and of the amounts available for distribution to members, and provided further that the association should render to a withdrawing member "a complete account of the almonds received by the association for account of said member and of the curing, pooling and marketing thereof."

In sustaining the right of a withdrawing member to detailed statements of pool transactions, the court stated:

> "An agent to whom goods are consigned for sale under an agreement that the proceeds after the deduction of expenses and other specified items are to be paid to the principal must inform the principal of the price received for the goods and state the details of the charges which he has made against the proceeds. The accounts submitted by the respondent do not measure up to this requirement. The appellant is entitled to an accounting which will give her complete information concerning the credits to and charges against all pools in which the nuts delivered by her assignor were packed and sold. Johnson v. Staple Cotton Co-op. Ass'n, 142 Miss. 312, 107 So. 2; Arkansas Cotton Growers' Co-op. Ass'n v. Brown, 168 Ark. 504, 270 S. W. 946, 1119; Rhodes v. Little Falls Dairy Co., 230 App. Div. 571, 245 N.Y.S. 432, affirmed 256 N.Y. 559, 177 N.E. 140."

The bylaws of the association provided for certain deductions to be made for the payment of expenses, and stated that such deductions "shall be charged proportionately to each member according to the number of pounds of almonds delivered by the members respectively for handling by the Exchange." The contention was made that under this provision the deductions should necessarily be made on an annual tonnage basis. However, the court held that as the expenses incurred in handling almonds in different pools varied greatly, it was admissible under the language quoted above to charge direct expenses proportionately to the tonnage of each particular pool and that the correct basis of determination was

not necessarily to be found in the bylaws alone, but that upon a further trial of the case, the court should consider all admissible evidence and require the computation of the charges to be made upon the basis which the evidence indicated.

In order to provide working capital, deductions, which were usually at the rate of 5 percent of the net sales proceeds, were made, and these amounts were placed in a so-called suspense account. This reserve was on a revolving fund basis, and the amounts deducted in later years were used in part to repay to growers the contributions made by them to the account in prior years. The association also maintained a reserve for fixed assets which was originally built up from the excesses of pool charges over actual expenditures, but subsequently percentage deductions were made for the purpose of building up and revolving this reserve.

It was the contention of the appellant that upon withdrawal, a member was entitled to be repaid the amounts contributed toward both of said reserves. On this point, the court stated:

> "Section 6 of article 12 of the by-laws provides that funds withheld in the suspense account or revolving funds shall be paid to withdrawing members coincident with like payments to nonwithdrawing members. The defendant Exchange recognizes its obligation under this by-law to pay plaintiff's assignor and other withdrawing members at the same time it shall repay nonwithdrawing members. The lower court sustained the contention of the Exchange that it was not at the time of trial in a position to make repayment of these contributions. We are of the view that its conclusion in this regard must be sustained.
>
> "In April, 1932, when plaintiff's assignor and a large number of other growers withdrew from the Exchange, this country was in the midst of the recent economic depression. The 1930 and 1931 crops of almonds had been unusually large and of poorer quality than usual. When plaintiff withdrew in 1932 a substantial part of these crops was still on hand. In the early months of 1933 the pools of 1930, 1931, and 1932 were tentatively closed while nuts of these years remained unsold, in order to make payments to growers for their nuts in advance of the sale of the nuts. The total proceeds to be derived from the sale of the nuts and the total expenses were estimated to compute the amount to be paid growers. It was possible to make this estimated full payment in advance of sale only because of the Exchange's working capital derived from contributions by growers in previous years. The amount of the reserve for working capital and fixed assets, carried on the liability side of the ledger, as noted above, represent the balance not repaid of contributions made by growers

to the reserves. The figures are not an amount on hand in cash. The funds realized through the deductions have been invested in the plant and used in making advances to growers in excess of sales proceeds.

"The Exchange at the time of plaintiff's withdrawal in 1932 and at the time of trial could not have attempted to repay to growers the balance of their contributions without liquidation of the Exchange. The by-law quoted above was framed with the purpose of affording adequate protection to withdrawing members and at the same time preventing withdrawals of members from imperiling the existence of the Exchange for the benefit of remaining members. As to the reserve for working capital, only the contributions of 1927, 1930, and 1931 remain unpaid. Even in normal times contributions are not repaid for several years. As to the reserve for fixed assets, contributions for 1926, 1927, 1930 and 1931 were unpaid when the answer was filed. Subsequently one-half of the 1926 contributions was repaid. Plaintiff's right under the by-laws is to receive the amounts unpaid coincident with like payments to nonwithdrawing members."

One of the grounds on which the plaintiff based her contention for immediate repayment of funds contributed to the reserves was a deviation from the requirements of the bylaws in making certain deductions. It appears that the bylaws originally provided for making deductions on a per pound basis, each pound of nuts in the entire crop bearing a uniform charge. However, in making the deductions, the growers' contributions to reserves for working capital and fixed assets were computed on the basis of a percentage of the net proceeds, and this practice was followed over a long period of years, and was shown by the Exchange on the pool closing statements and annual audit reports. Moreover, the articles of incorporation and bylaws of the association originally contained no reference to the revolving funds and were found by the court to be incomplete and ambiguous in setting forth the interests of the members in the property of the association which had come into existence through deductions.

In 1928, the association adopted an amendment to the bylaws which clarified this situation. The appellant contended that this amendment could not be applied retroactively, but on this point the court stated:

"Plaintiff contends that amendments of a by-law cannot be applied retroactively to destroy existing property or contract rights of members, and that plaintiff's assignor had a right prior to 1928 to object to deductions made otherwise than on a straight tonnage basis which could not be defeated

by the amendments of the by-laws in 1928. It is unnecessary here to decide what would be the rights of plaintiff or her assignor if said assignor had not assented to the by-law amendments of 1928, for we are of the view that it must be held that said assignor assented to said amendments as a ratification of said funds as they had theretofore existed in the operations of the Exchange and as a declaration of the practice to be followed in future dealings of the Exchange with its members. It was not shown that plaintiff's assignor actually participated in a vote to change the by-laws. But subsequent to 1928, as well as prior thereto, plaintiff's assignor raised no objection to the deductions plainly made on the basis of a percentage of the net proceeds, rather than on a tonnage basis, but acquiesced in the practice of the Exchange in this regard. It is true that at the time the reserve for fixed assets was placed on a revolving fund basis, plaintiff's assignor did object that interest was not to be paid on growers' contributions to this fund. But it did not continue to maintain this objection."

The appellant also contended that the grower had an interest in the reserves for depreciation and obsolescence, and also the unexpended balance of contributions made by members to establish a fund to secure favorable tariff legislation. The court pointed out, however, that such reserves were set up on a nonrefundable basis and to meet actual expenses and costs of doing business, and were divisible only in the event of dissolution. The appellant also objected that interest was not paid by the association to growers on the contributions to reserves for fixed assets, although interest was paid on the reserves for working capital. However, the court found that the board of directors, under authorization from the members, had fixed the character of the fund as noninterest bearing. Plaintiff objected, in addition, to the method of computing the annual charge for depreciation as applied to the crops of 1930 and 1931. It appears that in 1932 the board of directors passed a resolution changing the method of computing the amount to be charged against each ton or pound of nuts of "the 1932 crop" for depreciation on the plant and equipment; but as the resolution referred only to the 1932 crop, it was held inapplicable to the 1930 and 1931 crops, and on account of that fact the plaintiff was entitled to a readjustment with regard to deductions made on the new basis with respect to such crops.

The judgment of the lower court was reversed and a new trial ordered in accordance with the rules set forth in the opinion. Reinert v. California Almond Growers Exchange, _____ Cal. _____, 63 P. 2d 1114, rehearing 9 Cal. 2d 181, 70 P. 2d 190.

In keeping with the rule announced in this case, the court, in Adams v. Sanford Growers' Credit Corporation, 135 Fla. 513, 186 S. 239, held that where the bylaws of an association prescribed the disposition to be made of reserve funds, the association was bound thereby and must distribute the funds in accordance with the bylaws.

In Ozona Citrus Growers Association v. McLean, 124 Fla. 47, 165 S. 625, shortly after a member had withdrawn from the association, it went into liquidation. The association had made retains which were provided for in the bylaws and marketing agreement, and while the bylaws did not provide for handling the retains on a revolving fund basis, the association had followed the practice of distributing back to the members at the end of the season all amounts retained which were not required for general business purposes. The executor of the estate of a member brought an action for the appointment of a receiver to distribute the assets and the court held that the executor was entitled to have a receiver appointed and that the executor was entitled to receive on behalf of the member's estate its pro rata share of the surplus arising from retains in the liquidation of the association.

In Parker v. Dairymen's League Cooperative Association, Inc., 222 App. Div. 341, 226 N.Y.S. 226, a member of the association brought an action to recover payment for milk delivered and the association filed a counterclaim for liquidated damages in accordance with the marketing agreement. The association was functioning on a revolving fund basis and at the end of the year, issued to its members certificates of indebtedness for certain deductions made during the year. The producer contended that he was entitled to have these deductions credited to his account in a final settlement, but the court held that the producer was not entitled to an affirmative judgment for the sums so deducted for capital purposes. The case proceeds on the theory that the member who breached his contract and withdrew from the association was entitled to have a repayment of these deductions made only at the same time that others who continue to be members are paid, and that these funds were not available for immediate setoff.

MAY A MEMBER OF A COOPERATIVE ASSOCIATION ATTACK THE CONSTITUTIONALITY OF THE STATUTE UNDER WHICH HIS ASSOCIATION IS ORGANIZED?

A retail milk producers' association brought an action against one of its members in which it sought damages and prayed for an injunction for violation of a marketing agreement which, among other things, provided that

> "it shall be considered a breach of the agreement for any member of the association to market his milk in the Augusta market for less than the price agreed upon and fixed by the association as the minimum price. But the producer or member may cease production altogether at any time, and he is not required to deliver any specific quantity of milk per month; only that all that he produces shall be sold at not less than the minimum price fixed by the association."

The general demurrer of the member to the petition was overruled and the trial court granted the injunction as prayed. In affirming the judgment of the lower court, the Supreme Court of Georgia stated:

> "There is an attempt upon the part of the plaintiff in error to raise the question of the constitutionality of the acts referred to, and of the contract here involved between these two parties; but we do not think that the plaintiff in error is in a position to attack the constitutionality of either the acts or the contract. In Harrell v. Cane Growers' Cooperative Association, 160 Ga. 30, 126 S. E. 531, 549, a case in which similar questions are raised, a portion of the specially concurring opinion of Chief Justice Russell is applicable to the controlling question in this case. He said: 'If the act is discriminatory, he, as a member and officer of the association, belongs to the class in favor of which the alleged discrimination is made. He is not in position to assert that he is injured by the discrimination. The doctrine is well stated in 19 Ruling Case Law, 109, as follows: "As has been often pointed out, one who seeks to set aside a State anti-trust statute as repugnant to the federal Constitution must show that he is within the class with respect to whom the act is unconstitutional, and that the alleged unconstitutional feature injures him. The objection that such a statute unlawfully discriminates in favor of certain classes cannot be raised by a member of the favored class, nor by any one not affected by the invalid portion of the act." In Plymouth Coal Co. v. Pennsylvania, 232 U.S. 531, 532, 545, 34 S. Ct. 359, 58 L. Ed. 713, it was held that: "One attacking the constitutionality of a state statute must show that he is within the class whose constitutional rights are injuriously affected by the statute." The cases of Southern Railway Co. v. King, 217 U. S. 524, 534, 30 S. Ct. 594, 54 L. Ed. 868, Standard Stock Food Co. v. Wright, 225 U. S. 540, 550, 32 S. Ct. 784, 56 L. Ed. 1197, and Rosenthal v. New York, 226 U. S. 260, 271, 33 S. Ct. 27, 57 L. Ed. 212, Ann. Cas. 1914B, 71, were cited in support of this rule. Subsequently in Mallinckrodt Chemical Works v. Missouri, 238 U. S. 41, 54, 35 S. Ct. 671, 674, 59 L. Ed. 1192, the United States Supreme Court held: "As has been often pointed out, one who seeks to set aside a state statute as repugnant to the federal Constitution must show that he is within the class with respect to whom the act is unconstitutional, and that the alleged unconstitutional feature injures him." In Owen County Society v. Brumback, 128 Ky. 137, 149, 107 S. W. 710, the Supreme Court of Kentucky held that: "If it (the act) could be held to be discriminatory it is clear that that question cannot be raised by the defendant. He has not been discriminated against. He has not been denied any privilege or immunity that is granted to any other person or class of persons, nor has he been denied the equal protection of the law." The proceeding

in the Kentucky case was under a co-operative marketing act, such as that now before us. The co-operative association there sued a grower member for injunction upon his failure to deliver tobacco. The plaintiff association was organized under the Kentucky law, which permitted farmers' co-operative contracts of the same nature as the contract here involved. * * *!"

There is no discussion in the opinion of the rather unusual way in which the association operated. Apparently the court proceeded on the theory that, even though an association acted as an agency to determine the minimum prices at which its members might market their milk, it was entitled to the same relief as other cooperative associations.

Johnson v. Georgia-Carolina Retail Milk Producers' Association, 182 Ga. 695, 186 S. E. 824.